

1 Scott D. Cunningham (State Bar No.: 200413)  
2 CONDON & FORSYTH LLP  
3 1901 Avenue of the Stars, Suite 850  
4 Los Angeles, California 90067-6010  
5 Telephone: (310) 557-2030  
6 Facsimile: (310) 557-1299  
7 Email: scunningham@condonlaw.com

8 -and-

9 Marshall S. Turner (*pro hac vice*)  
10 CONDON & FORSYTH LLP  
11 7 Times Square  
12 New York, NY 10036  
13 Telephone: (212) 490-9100  
14 Facsimile: (212) 370-4453  
15 Email: mturner@condonlaw.com

16 Attorneys for Plaintiff and Counter-Defendant  
17 ALL NIPPON AIRWAYS COMPANY, LTD.

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 ALL NIPPON AIRWAYS COMPANY,) Case No. C 07 3422 EDL  
21 LTD., } ANSWER AND AFFIRMATIVE  
22 Plaintiff, } DEFENSES OF ALL NIPPON  
23 vs. } AIRWAYS COMPANY, LTD. TO  
24 UNITED AIR LINES, INC., } UNITED AIR LINE, INC.'S FIRST  
25 Defendant. } AMENDED COUNTER-  
26 UNITED AIR LINES, INC., } COMPLAINT  
27 Counter-Plaintiff, }  
28 vs. }  
29 ALL NIPPON AIRWAYS COMPANY,)  
30 LTD., }  
31 Counter-Defendant. }  
32 )

33 Plaintiff and Counter-Defendant, ALL NIPPON AIRWAYS COMPANY,  
34 LTD. (hereinafter "ANA"), by its attorneys, Condon & Forsyth LLP, hereby

1 answers Defendant and Counter-Plaintiff UNITED AIR LINES, INC.'S ("UAL")  
2 First Amended Counter-Complaint as follows:

3  
4 **THE PARTIES**

5 1. ANA denies the allegations in paragraph 1 of the First Amended  
6 Counter-Complaint.

7 2. ANA admits the allegations in paragraph 2 of the First Amended  
8 Counter-Complaint.

9  
10 **JURISDICTION**

11  
12 3. ANA admits the allegations in paragraph 3 of the First Amended  
13 Counter-Complaint, except ANA denies that damages sustained by UAL exceed  
14 \$700,000.00.

15  
16 **INTRADISTRICT ASSIGNMENT**

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18 4. ANA admits the allegations in paragraph 4 of the First Amended  
19 Counter-Complaint.

20  
21 **GENERAL ALLEGATIONS**

22  
23 5. ANA admits the allegations in paragraph 5 of the First Amended  
24 Counter-Complaint to the extent that on October 7, 2003 at San Francisco  
25 International Airport, San Francisco, California, an ANA Boeing B777 aircraft  
26 (Reg. No. JA709A) designated as ANA's Flight NH007 ("NH007") was involved

1 in a collision on the ground with a UAL Boeing B777 aircraft (Reg. No. N222UA)  
2 designated as UAL's Flight UA809 ("UA809"). Except as expressly admitted,  
3 ANA denies the allegations contained in paragraph 5 of the First Amended  
4 Counter-Complaint.

5 6. ANA denies the allegations in paragraph 6 of the First Amended  
6 Counter-Complaint.

7 7. ANA admits the allegations in paragraph 7 of the First Amended  
8 Counter-Complaint.

9  
10 **AS TO COUNT ONE AGAINST ANA**

11  
12 8. ANA repeats, reiterates and realleges each and every allegation,  
13 admission and denial to paragraphs 1 through 7, inclusive, of the First Amended  
14 Counter-Complaint with the same force and effect as if herein set forth in full.

15 9. The allegations in paragraph 9 of the First Amended Counter-  
16 Complaint constitute a legal assertion and need not be specifically admitted or  
17 denied by ANA, but ANA denies that it breached any legal duty owed.

18 10. ANA denies the allegations in paragraph 10 of the First Amended  
19 Counter-Complaint.

20 11. ANA denies the allegations in paragraph 11 of the First Amended  
21 Counter-Complaint.

22 12. ANA denies the allegations in paragraph 12 of the First Amended  
23 Counter-Complaint.

24 13. ANA denies the allegations in paragraph 13 of the First Amended  
25 Counter-Complaint.

26  
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28

## AS TO COUNT TWO AGAINST ANA

14. ANA repeats, reiterates and realleges each and every allegation, admission and denial to paragraphs 1 through 13, inclusive, of the First Amended Counter-Complaint with the same force and effect as if herein set forth in full.

15. ANA denies the allegations in paragraph 15 of the First Amended Counter-Complaint.

16. ANA denies the allegations in paragraph 16 of the First Amended Counter-Complaint.

17. The allegations in paragraph 17 of the First Amended Counter-Complaint constitute a legal assertion and need not be specifically admitted or denied by ANA.

18. The allegations in paragraph 18 of the First Amended Counter-Complaint constitute a legal assertion and need not be specifically admitted or denied by ANA.

19. ANA denies the allegations in paragraph 19 of the First Amended Counter-Complaint.

20. ANA denies the allegations in paragraph 20 of the First Amended Counter-Complaint.

## AS TO COUNT THREE AGAINST ANA

21. ANA repeats, reiterates and realleges each and every allegation, admission and denial to paragraphs 1 through 20, inclusive, of the First Amended Counter-Complaint with the same force and effect as if herein set forth in full.

22. ANA admits the allegations in paragraph 22 of the First Amended

1 Counter-Complaint to the extent that ANA and UAL executed Annex B.1.3, which  
2 speaks for itself.

3 23. Annex B.1.3 executed by ANA and UAL speaks for itself and the  
4 allegations in paragraph 23 of the First Amended Counter-Complaint need not be  
5 specifically admitted or denied by ANA.

6 24. Annex B.1.3 executed by ANA and UAL speaks for itself and the  
7 allegations in paragraph 24 of the First Amended Counter-Complaint need not be  
8 specifically admitted or denied by ANA.

9 25. ANA denies knowledge or information sufficient to form a belief as to  
10 the truth of the allegations in paragraph 25 of the First Amended Counter-  
11 Complaint.

12 26. ANA denies the allegations in paragraph 26 of the First Amended  
13 Counter-Complaint.

14 27. ANA denies the allegations in paragraph 27 of the First Amended  
15 Counter-Complaint.

16 28. ANA denies the allegations in paragraph 28 of the First Amended  
17 Counter-Complaint.

18 **AS TO COUNT FOUR AGAINST ANA**

19  
20 29. ANA repeats, reiterates and realleges each and every allegation,  
21 admission and denial to paragraphs 1 through 28, inclusive, of the First Amended  
22 Counter-Complaint with the same force and effect as if herein set forth in full.

23 30. ANA denies the allegations in paragraph 30 of the First Amended  
24 Counter-Complaint.

25 31. Annex B.1.3 executed by ANA and UAL speaks for itself and the  
26 allegations in paragraph 31 of the First Amended Counter-Complaint need not be  
27

1 specifically admitted or denied by ANA.

2 32. Annex B.1.3 executed by ANA and UAL speaks for itself and the  
3 allegations in paragraph 32 of the First Amended Counter-Complaint need not be  
4 specifically admitted or denied by ANA.

5 33. ANA denies the allegations in paragraph 33 of the First Amended  
6 Counter-Complaint.

7 34. The allegation in paragraph 34 of the First Amended Counter-  
8 Complaint constitutes a legal assertion and need not be specifically admitted or  
9 denied by ANA, but it is denied.

10 35. ANA denies the allegations in paragraph 35 of the First Amended  
11 Counter-Complaint.

12 **FIRST AFFIRMATIVE DEFENSE**

13 **TO EACH AND EVERY CAUSE OF ACTION**

14 36. UAL's First Amended Counter-Complaint fails to state a claim  
15 against ANA upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **TO EACH AND EVERY CAUSE OF ACTION**

19 37. Any injury, damage, or loss sustained by UAL, if such occurred, was  
20 proximately caused and contributed to by UAL'S own negligence or culpable  
21 conduct. Accordingly, ANA is not liable to UAL or, alternatively, UAL's  
22 recovery, if any, should be reduced by the amount of negligence attributable to the  
23 conduct of UAL.

**THIRD AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

3       38. The incident alleged in the First Amended Counter-Complaint, and  
4 the damages UAL alleges it sustained as a result of the incident, were due to the  
5 negligence or other wrongful acts or omissions of other parties, their agents or  
6 employees, or by others unknown at this time over whom defendant ANA had no  
7 control at any time relevant hereto; however, in the event that a finding is made  
8 that negligence exists on the part of ANA, which proximately contributed to  
9 UAL's damages alleged in the First Amended Counter-Complaint, ANA's liability,  
10 if any, should be reduced by an amount proportionate to the amount by which the  
11 comparative negligence of such other persons or entities contributed to the  
12 happening of the alleged incident and damages upon which plaintiff seeks  
13 recovery.

**FOURTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

17       39. UAL's damages, if any, are due to the acts or omissions of persons or  
18 entities other than ANA; however, in the event a finding is made that liability  
19 exists on the part of ANA, which liability is expressly denied, ANA is entitled to  
20 indemnity and/or contribution from such persons or entities in direct proportion to  
21 their respective fault.

**FIFTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

25        40. The injuries and damages allegedly suffered by UAL were caused by  
26 intervening and superceding causes, not caused by ANA.

**SIXTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

41. UAL failed to exercise reasonable care and diligence to mitigate its alleged damages, if any, and on this ground UAL is barred from asserting its claims against ANA.

**SEVENTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

42. If any damages are awarded to UAL, ANA is entitled to a reduction for all amounts paid or available from all collateral sources.

**EIGHTH AFFIRMATIVE DEFENSE  
TO EACH AND EVERY CAUSE OF ACTION**

43. UAL's violation of federally enacted regulations, including but not limited to the Federal Aviation Regulations, defeats UAL's claims in whole or in part.

**NINTH AFFIRMATIVE DEFENSE**  
**TO EACH AND EVERY CAUSE OF ACTION**

44. UAL's damages, if any, are barred by the applicable statute of limitations.

45. ANA intends to rely upon such other affirmative defenses as become discovered through discovery and up to the date of trial and reserves the right to modify the foregoing affirmative defenses if necessary.

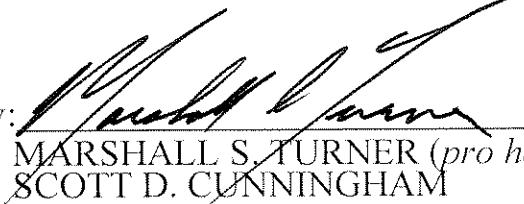
1  
2 WHEREFORE, ANA prays as follows:

3 1. That UAL take nothing by reason of UAL's First Amended Counter-  
4 Complaint herein and for judgment in favor of ANA; and  
5 2. For such relief as the Court may deem just and proper.

6 Dated: November 15, 2007

CONDON & FORSYTH LLP

7 By:  
8

  
9 MARSHALL S. TURNER (*pro hac vice*)  
SCOTT D. CUNNINGHAM

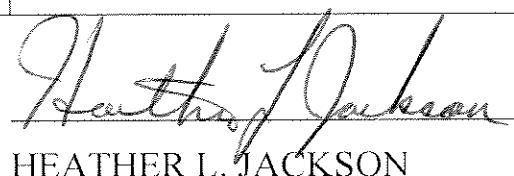
10 Attorneys for Plaintiff and Counter-  
11 Defendant  
12 ALL NIPPON AIRWAYS COMPANY,  
13 LTD.

**CERTIFICATE OF SERVICE**

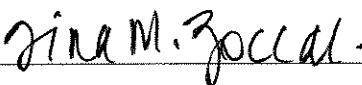
ALL NIPPON AIRWAYS' ANSWER AND AFFIRMATIVE DEFENSES OF  
 ALL NIPPON AIRWAYS COMPANY, LTD. TO UNITED AIR LINES, INC'S  
 FIRST AMENDED COUNTER-COMPLAINT

I, hereby certify that on November 15, 2007 I electronically filed the foregoing paper with the Clerk of the Court using the ECF System which will send notification of such filing to the following:

8	Scott R. Torpey, Esq. Jaffe, Raitt, Heuer & Weiss 2777 Franklin Road, Suite 2500 Southfield, MI 48034-8214 Phone: (248) 727-1461 Fax: (248) 351-3082	12	Attorneys for defendant
13	Jeffrey A. Worthe, Esq. Worthe, Hanson & Worthe The Xerox Centre 1851 East First Street, Ninth Floor Santa Ana, CA 92705	17	Attorneys for defendant

  
 HEATHER L. JACKSON

21 Sworn to before me this  
 22 15<sup>th</sup> day of November, 2007

  
 25 \_\_\_\_\_  
 26 Notary Public

TINA M. ZOCCALI  
 Notary Public, State of New York  
 No. 01ZO6059025  
 Qualified in Rockland County  
 Commission Expires May 21, 20 11

27 -10-  
 28

ANSWER AND AFFIRMATIVE DEFENSES OF ALL NIPPON  
 AIRWAYS COMPANY, LTD. TO UNITED AIR LINE, INC'S  
 FIRST AMENDED COUNTER-COMPLAINT  
 CASE NO.: C 07 3422 EDL